

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2012-117032-002 DT
CR2011-145395-001 DT

07/09/2012

COMMISSIONER VIRGINIA L. RICHTER

CLERK OF THE COURT
C. McCain
Deputy

STATE OF ARIZONA

KALON METZ

v.

IVY LEE DAVIS JR. (002)

JOHN W MCBEE

COMPREHENSIVE PRETRIAL CONFERENCE/TRIAL ORDERS

10:07 a.m.

Courtroom CCB1002

State's Attorney:	Kalon Metz
Defendant's Attorney:	John McBee
Defendant:	Present

A record of the proceedings is made by audio and/or videotape in lieu of a court reporter.

AS TO CR2012-117032-001:

This is the time set for Comprehensive Pretrial Conference.

LET THE RECORD REFLECT, pursuant to the Donald opinion, the Court informs the Defendant of the penalties if convicted and the plea agreement that is being offered at this time.

Defendant rejects the plea offer at this time.

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Status of the case is discussed.

Comprehensive Pretrial Statement:

A. Status of Case: A plea offer was made. The offer expires on 07/12/2012. A settlement conference was not held. A Donald advisement was made.

B. Status of Disclosure: Disclosure is completed.

C. The number of days for trial is expected to be 3-4.

D. The number of witnesses (combined for both sides) is expected to be 10-14. The number of out of state witnesses is expected to be 0. The number of expert witnesses is expected to be 0.

E. Status of the interviews: The number of interviews completed is 0. The number of interviews left to complete is 0. The number of depositions required is 0.

F. An interpreter is not required for this trial.

G. The number of jurors required for this trial is 8. The number of requested alternates is 1-2.

H. The State is requesting an aggravating factors trial to the jury.

I. Counsel has not submitted special jury instructions.

J. Counsel has not requested a lesser-included offense.

K. A substantive motion is not anticipated by one or more of the parties.

L. A motion in limine is not anticipated by one or more of the parties.

IT IS ORDERED affirming Final Trial Management Conference (FTMC) on 08/06/2012 at 8:30 a.m. before Commissioner Passamonte.

IT IS FURTHER ORDERED affirming the Firm Trial Date of 08/14/2012 at 8:00 a.m. before the Master Calendar Assignment Judge in Courtroom 5B in the South Court Tower. All

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subpoenaed witnesses are to report to Courtroom 5B in the South Court Tower for trial and will be directed to the trial court from there.

IT IS FURTHER ORDERED that the Joint Pretrial Statement (JPTS) is due in the case management division by 5:00 p.m., five (5) judicial days before the FTMC.

IT IS FURTHER ORDERED with the JPTS, Counsel shall deliver to the case management division, copies of the following:

A. A jointly-completed time and witness estimate list. The Court will use the list to predict the length of the trial for the jurors and to direct Counsel to follow the trial time limits established. Any time limitation set will be reasonable presumptive limits subject to modification upon a showing of good cause.

B. A joint set of agreed upon preliminary and final jury instructions, including Preliminary Criminal RAJI or standard RAJI.

C. Separate sets of requested instructions that have not been agreed upon. Please read *Rosen v. Knaub*, 175 Ariz. 329, 857 P.2d 381 (1993).

D. Proposed Voir Dire questions which the Court will give. In jury trial cases the parties shall jointly prepare a brief summary of the case which the Court will read to the jury at the commencement of voir dire.

E. Any juror notebooks. The Court encourages use of juror notebooks in appropriate cases. Stipulating the contents into evidence is necessary. Key exhibits may be included, along with diagrams, photographs, and timelines.

IT IS FURTHER ORDERED that any disclosure and/or discovery shall be completed no later than seven (7) days prior to trial. Any party seeking further disclosure and/or discovery after the discovery deadline shall seek leave of the Court by motion supported by affidavit to extend the time for disclosure and/or discovery. Parties may extend the deadline by written stipulation which waives any objections to the late disclosure and/or discovery.

MOTIONS IN LIMINE

Any motions in limine shall be filed thirty (30) days before the FTMC and such motions must meet the test of *State v. Superior Court*, 108 Ariz. 396, 397, 499 P.2d 152 (1972): "The

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primary purpose of a motion in limine is to avoid disclosing to the jury prejudicial matters which may compel a mistrial." See also, Ariz. Rules of Evidence, Rule 103(c). A written response to a motion in limine may be filed no later than ten (10) days thereafter. The Court will rule on the motions in limine without oral argument. If the Court wishes to hear argument, the argument will be heard at the morning of the FTMC.

PRETRIAL MOTIONS

All pretrial motions must be filed in writing twenty (20) days before the FTMC. All motions must comply with Rule 35.1 including setting forth a sufficient factual basis for the motion. Failure to file a sufficient motion may result in the motion being denied without evidentiary hearing. See: Rule 16.1[c] Rule 16.2 [b]; State v. Anaya 170 Ariz. 436, 443 (1991); State v. Wilson 164 Ariz. 406, 407 (1990) and State v. Alvarado 121 Ariz. 485, 487 (1979).

All pretrial motions shall be filed with this division.

The Court will hear and rule upon objections at the FTMC. The rulings will be stated on the record, using exhibit numbers. All objections to known exhibits and witnesses must be made before or during the FTMC or will be deemed to have been waived.

IT IS FURTHER ORDERED that counsel, at the FTMC, shall be prepared to discuss:

- A. Time limits in voir dire, opening statements, examination of witnesses and closing arguments.
- B. Stipulations for the foundation and authenticity of exhibits.
- C. Jury instructions (preliminary and final), juror notebooks (Counsel shall bring any proposed jury notebooks to the conference), mini-opening statements and voir dire.
- D. Any special scheduling or equipment issues.
- E. Status of settlement of the case.

EXPEDITED DISCOVERY

If there are any issues as to the disclosure required under Rule 15, the parties shall attempt to resolve the issue under Rule 15.7 (b). After personal consultation, the party seeking

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relief shall file a written motion setting forth the issue and requested relief. This motion, the opposing parties' response, and any reply shall be filed with this division.

All parties shall comply with Rule 15 disclosure orders. Failure to comply could result in sanctions which could include preclusion of witnesses, monetary fines, or any other sanction which is deemed appropriate.

FAILURE TO APPEAR

A defendant's failure to appear at any final trial management conference, trial, evidentiary hearing, or any hearing set before the court may result in a bench warrant being issued for his or her arrest and the FTMC, trial, evidentiary hearing or any hearing set before the court may be conducted in the defendant's absence.

CONTINUANCE OF TRIAL

The trial date shall not be continued unless a written motion to continue is filed at least five days before trial. A continuance will not be granted unless the motion shows that extraordinary circumstances exist. (Rule 8.5, Rules of Criminal Procedure and guidelines thereto).

INTERPRETER

It is the responsibility of counsel to notify the court before which a hearing will be held 48 hours in advance of any hearing needing an interpreter for a victim or witness (10 business days for any language other than Spanish).

LAST DAY: 09/13/2012.

AS TO CR2011-145395-001:

IT IS ORDERED the Non Witness Violation Hearing shall be heard in conjunction with the dates as affirmed above.

IT IS FURTHER ORDERED affirming prior custody orders.

10:10 a.m. Matter concludes.